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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,283	10/16/2003	Stephen Loomis	AOL0115	9200
22862 7590 04/02/2008 GLENN PATENT GROUP 3475 EDISON WAY, SUITE L MENLO PARK, CA 94025				
EXAMINER				
KEEFE, MICHAEL E				
ART UNIT		PAPER NUMBER		
2154				
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04/02/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/688,283

**Applicant(s)**

LOOMIS ET AL.

**Examiner**

MICHAEL E. KEEFER

**Art Unit**

2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date 3/5/2008
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. This Office Action is responsive to the Amendment filed 1/8/2008. Claims 1-30 are pending.

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 3, 13, and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "compliant to a standard" appearing in claims 3, 13, and 23 is unclear and indefinite because there is no suggestion in the claim, or in the specification what makes a loop "compliant to a standard".

The Examiner will give the phrase "compliant to a standard" the broadest reasonable interpretation.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1, 4-5, 9-11, 14-15, 19-21, 24-25, and 29-30 rejected under 35 U.S.C. 103(a) as being unpatentable over Goldman (US 6067562), in view of Day et al. (US 5996015), hereafter Day.

Regarding **claims 1, 11 and 21**, Goldman discloses:

periodically retrieving a play list from a database for content delivery for each station that a system serves; analyzing each of the retrieved play lists to determine content that is already locally cached, and content that needs to be retrieved; (Col. 2, lines 15-25 "The system then validates the selections and requests the loading of any material not present")

fetching content that needs to be retrieved for each of the retrieved play lists; (Col. 1 lines 57-61 If a song is not available locally it can be downloaded from another server)

locally caching the fetched content; (Col. 1 lines 57-61 If a song is not available locally it can be downloaded from another server)

Goldman does not specifically disclose matching bit-rates of a stream and concatenating a playlist into a stream. In analogous art, Day discloses concatenating the cached content into a stream for each of the stations, based on the retrieved play list for each of the stations; and transmitting the streams of the content to at least one distribution point for relaying to at least one client terminal. (Abstract "multimedia files are seamlessly concatenated on the fly"). It would have been obvious to one of ordinary skill in the art to combine the teaching of Day with

Goldman in order to allow a broadcast station to use differing types of media more easily and also to allow a broadcast station to stream information over the Internet or other networks.

Regarding **claims 4, 14, and 24**, Goldman discloses:

Content is audio content. (Goldman discloses audio stations) (Col. 1 lines 12-13 "a digital audio system")

Goldman discloses all the limitations of claims 1, 4-5, 9-11, 14-15, 19-21, 24-25, and 29-30 except for matching bit-rates of a stream and concatenating a playlist into a stream and that the content can be video.

Regarding **claims 5, 15, and 25**, Goldman teaches the invention as described in claim 1 above. Goldman does not specifically disclose that the content can be video content. In analogous art, Day teaches: Content is video content. (Col. 2 line 31 teaches video files). It would have been obvious to one of ordinary skill in the art to combine the teaching of Day with Goldman in order to allow a broadcast station to use differing types of media more easily and also to allow a broadcast station to stream information over the Internet or other networks.

Regarding **claims 9, 19, and 29**, Goldman teaches the invention as described in claim 1 above. Goldman does not specifically disclose that the client is a computer. In analogous art, Day teaches:

The client is a computer (Fig. 2, item 203)

It would have been obvious to one of ordinary skill in the art to combine the teaching of Day with Goldman in order to allow a broadcast station to use differing types of media more easily and also to allow a broadcast station to stream information over the Internet or other networks.

Regarding **claims 10, 20 and 30**, Goldman teaches the invention as described in claim 1 above. Goldman does not specifically disclose matching the play rate of the stream to the reate of play of the client. In analogous art, Day teaches:

Matching the rate of play of the stream to the rate of play of the client. (Col. 5 lines 67 - Col. 6 line 2, the encoding rate of the file must be accommodated with the bitrate or transfer rate of the device)

It would have been obvious to one of ordinary skill in the art to combine the teaching of Day with Goldman in order to allow a broadcast station to use differing types of media more easily and also to allow a broadcast station to stream information over the Internet or other networks.

5. Claims 2-3, 12-13, and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldman and Day as applied to claims 1, 11, and 21 above, and further in view of Pezzillo et al. (US 6434621), hereafter Pezzillo.

Goldman and Day teach all the limitations of claims 2-3, 12-13, and 22-23 except for a loop being created and that the loop is compliant to a standard.

Regarding **claims 2, 12, and 22 as applied to claims 1, 11, and 21**, Goldman-Day disclose the invention as described in the claims above. Goldman-

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Day do not specifically disclose a loop being created. In analogous art, Pezzillo teaches:

Looping a stream of media content. (at least Col. 5 lines 56-57 states that a single group of files (i.e. the stream) may be played in a loop).. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Goldman and Day with Pezzillo in order to allow compliance with the DMCA statutory requirements, as well as to eliminate the possibility of dead air time.

Regarding **claims 3, 13, and 23**, Goldman-Day discloses the invention as described in the claims above. Goldman-Day do not disclose the loop compliant to a standard. In analogous art, Pezzillo teaches: the loop is compliant to a standard. (the Examiner notes that it is inherent that the loop must be compliant to -some- standard, at least the standard formatting of content that the client requires to be able to even play the file. However, at least Col. 17-18 teach a system to ensure DMCA compliance).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Goldman and Day with Pezzillo in order to allow compliance with the DMCA statutory requirements, as well as to eliminate the possibility of dead air time.

6. Claims 6-7, 16-17, and 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldman and Day as applied to claims 1, 11, and 21 above, and further in view of Addington (US 2003/0028893).

Goldman and Day teach all the limitations of claims 6-7, 16-17, and 26-27 except for incorporating metadata indicating content duration into the stream.

The general concept of incorporating metadata indicating content duration into a stream is well known in the art as taught by Addington. ([0030] discloses including metadata indicating a duration of the stream into the stream.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Goldman and Day and the general concept of incorporating metadata indicating content duration into a stream as taught by Addington in order to allow the user to see the length of time a stream will take to play.

7. Claims 6, 8, 16, 18, 26, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldman and Day as applied to claims 1, 11, and 21 above, and further in view of Costello et al. (US 6609097), hereafter Costello.

Goldman and Day teach all the limitations of claims 6, 8, 16, 18, 26, and 28 except for incorporating metadata indicating time remaining into the stream.

The general concept of incorporating metadata indicating time remaining into a stream is well known in the art as taught by Costello. (Col. 9 lines 9-11 teach including remaining play time as metadata with a stream.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Goldman and Day and the general concept of incorporating metadata indicating time remaining into a stream as taught by Costello in order to allow the user to see a remaining play time for a stream.

***Response to Arguments***

8. Applicant's arguments with respect to claims 1-30 have been considered but are moot in view of the new ground(s) of rejection.

Additionally, regarding the rejections under 35 U.S.C. 112 2nd paragraph, the Examiner further notes that the amendment to the claim does not further detail what exactly the functionality of a loop that is compliant with a standard entails; in fact, the amendment makes the claim further indefinite, because in the claim's previous form, one of ordinary skill in the art could at least assume that the functionality had something to do with digital rights management, since that is what the DMCA involves; now since the loop only has to comply to "a standard", it is indefinite what exactly about the loop is complying to what kind of a standard (i.e. a standard codec, a standard of quality, a standard length, etc.).

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. See MPEP § 706.07(a).

10. Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on 3/5/2008 also prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS**

**MADE FINAL.** See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL E. KEEFER whose telephone number is (571)270-1591. The examiner can normally be reached on Monday through Friday 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached on (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MEK 3/28/2008

/Joseph E. Avellino/  
Primary Examiner, Art Unit 2143